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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

09 CR 940 (TPG)

6 CONSTANTINE GIANNAKOS,

7 Defendant.  
-----x

8 New York, N.Y.  
9 August 21, 2012  
10 4:35 p.m.

11 Before:

12 HON. THOMAS P. GRIESA,

13 District Judge

14 APPEARANCES

15 PREET BHARARA  
16 United States Attorney for the  
17 Southern District of New York  
18 MICHAEL FERRARA  
19 Assistant United States Attorney

20 FISCHETTI & MALGIERI  
21 Attorneys for Defendant  
22 BY: PHYLLIS MALGIERI  
23 ERIC FRANZ

24 ALSO PRESENT: JEFF STEIMEL, Pretrial Services  
25 DARRIN KIBEL, FBI  
KURT DIRKER, FBI

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1 (Case called)

2 THE COURT: What's the application, please?

3 MR. FERRARA: Your Honor, this is just it's a little  
4 confusing because this is a superseding information.

5 Mr. Giannakos is here for the first time appearing in any  
6 court. He has not yet been charged before today.

7 The reason it's a superseding information is because  
8 Mr. Giannakos is part of a larger case that your Honor is  
9 familiar with, U.S. v. Danny Siony. Mr. Siony was sentenced in  
10 this court a few weeks ago for his involvement in a mortgage  
11 fraud conspiracy. I was present for the government on that  
12 day. Mr. Giannakos is now being charged as part of that  
13 conspiracy.

14 And so today we are asking the Court, present and  
15 arraign the defendant, that is to say, institute a bail  
16 package, as well as my understanding is that Mr. Giannakos is  
17 prepared to enter a guilty plea today, as well, pursuant to the  
18 agreement dated June 27 that is in front of the Court.

19 THE COURT: You're counsel for --

20 MS. MALGIERI: That's correct, your Honor. We joined  
21 in.

22 THE COURT: All right. Let me be certain about how to  
23 pronounce your name.

24 MS. MALGIERI: Malgieri.

25 THE COURT: What?

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1 MS. MALGIERI: Malgieri.

2 THE COURT: Hard G.

3 MR. FRANZ: Yes.

4 THE COURT: Can I question your client?

5 MS. MALGIERI: Yes, your Honor.

6 THE COURT: All right. Keep seated. The microphones  
7 don't reach very well.

8 And how do you pronounce your client's name?

9 MS. MALGIERI: Giannakos.

10 THE COURT: Giannakos.

11 Mr. Giannakos, how old are you?

12 THE DEFENDANT: Forty-five, your Honor.

13 THE COURT: And you're represented here by your  
14 attorney, Phyllis Malgieri?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And are you satisfied with her  
17 representation and her advice?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Are you under the influence of any alcohol  
20 or narcotics as you appear here?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Have you been subjected to any force or  
23 any threats to get you to waive indictment or plead guilty?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: I want to deal with the waiver of

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1 indictment first.

2 Did you sign a waiver of indictment today?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Ms. Malgieri, did you sign the waiver of  
5 indictment?

6 MS. MALGIERI: I did, your Honor.

7 THE COURT: All right. And I just want to explain to  
8 Mr. Giannakos -- am I saying it right?

9 MR. FRANZ: Yes, your Honor.

10 THE COURT: I just want to say that normally a  
11 criminal charge starts with an indictment. That means that a  
12 grand jury is presented evidence. A grand jury hasn't tried  
13 the case, but the government has been required, the prosecutor  
14 has been required to put on evidence to the grand jury and the  
15 grand jury must be satisfied that there's probable cause to  
16 believe that the defendant committed the crime that is charged  
17 against that defendant. And then an indictment comes out of  
18 the grand jury.

19 The case from now on will not be going on under an  
20 indictment. It will be going on under an information which has  
21 not come out of a grand jury; it's simply a document signed by  
22 the Department of Justice.

23 Do you understand what I've told you?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And are you willing to give up your right

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1 to have an indictment and have the case proceed on an  
2 information?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right. I find that the waiver of  
5 indictment is voluntary and is understandingly given.

6 Let's come to the guilty plea.

7 Mr. Giannakos, did you sign a plea agreement today?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And, Ms. Malgieri, did you sign the plea  
10 agreement?

11 MS. MALGIERI: Yes, your Honor.

12 THE COURT: And did you go over it thoroughly with  
13 your client?

14 MS. MALGIERI: Yes, sir.

15 THE COURT: All right. Now, I know that Ms. Malgieri  
16 has gone over the charges thoroughly with you but I'm obliged  
17 to summarize them in open court. And I won't go into detail,  
18 but basically you're facing charges that you participated in a  
19 scheme to obtain loans, mortgage loans on homes through  
20 fraudulent pretenses inflicted on the lending banks, and that's  
21 the essence of the charge.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And I'm not going to go into any more  
25 detail unless anybody requests it.

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Now, the plea agreement deals at some length with the question of sentence and I'm not going to -- I would apprise you and state to you that the question of what sentence to impose is up to me to decide as the judge. I make no decision on that this afternoon and can only make that decision at a future time when I have a full report about you and have a full report about the matters that are covered in the plea agreement. And, of course, I would need to hear from lawyers and from you, and none of that can be done this afternoon.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: The only thing that I am obliged to spell out to you is what the statutes provide as to potential sentences.

The potential sentence for Count One is a maximum of 30 years in prison, maximum supervised release term following prison of five years, a fine of up to \$1 million or even more.

The potential sentence on Count Two is a maximum of 20 years in prison, up to three years' supervised release following any prison, and fine of \$250,000 or even more.

The potential sentence on Count Three is up to 20 years in prison, up to three years' supervised release following prison, a fine of \$250,000 or even more.

The potential sentence on Count Four is a prison term of up to 30 years, supervised release term of up to five years,

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1 a fine of a million dollars or even more.

2 And on each of the four counts, if there's a  
3 conviction, there must be \$100 special assessment paid on each  
4 such count where there's a conviction.

5 In theory, there could be a sentence which would add  
6 all those sentences for the individual counts up, but that's  
7 pretty much theory.

8 You've understood what I've said, right?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Okay. I'm going to ask you some questions  
11 to make sure you understand the rights you're giving up by  
12 pleading guilty.

13 Do you understand that you do not need to plead  
14 guilty, that you have a right to maintain a not guilty plea and  
15 go to trial; do you understand that?

16 THE DEFENDANT: Yes, I do, your Honor.

17 THE COURT: And do you understand that at that trial,  
18 in order to obtain a conviction on any count, the government  
19 would have to prove your guilt to a jury by proof beyond a  
20 reasonable doubt; do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You'd have a right to an attorney at all  
23 times and during a trial and on any appeal, and you'd have a  
24 right to have the government pay for your attorney at any time  
25 you couldn't pay for one yourself.

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1           Do you understand that?

2           THE DEFENDANT: Yes, your Honor.

3           THE COURT: And at that trial which you'd have a right  
4 to, your attorney would have a right to cross-examine all the  
5 government witnesses and get a court order to bring in any  
6 witnesses who might help your case.

7           Do you understand that?

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: You yourself would have a right to remain  
10 silent at that trial. You wouldn't have to confess or testify  
11 in any way.

12          Do you understand that?

13          THE DEFENDANT: Yes, your Honor.

14          THE COURT: But if you plead guilty there will be no  
15 trial. You'll be convicted on these four counts according to  
16 your own plea and your own admission, and you'll need to tell  
17 me in your own words what you did to commit the offenses that  
18 are charged here. And you'll need to make all statements in  
19 that regard truthfully or else you will be guilty of a new  
20 crime of perjury or false statement.

21          Do you understand that?

22          THE DEFENDANT: Yes, your Honor.

23          THE COURT: Now, if you wish to plead guilty, would  
24 you tell me in your own words what you did to commit the  
25 offenses that are charged here?

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1                   THE DEFENDANT: From at least in or about  
2 February 2004 through at least in or about December 2008, I  
3 agreed with others to engage in a scheme to defraud lenders of  
4 money by preparing and submitting applications and supporting  
5 documentation for home mortgage loans that contained materially  
6 false or misleading information in order to induce lenders to  
7 make loans to persons and at terms that the lenders otherwise  
8 would not have funded.

9                   That was for Count One, your Honor.

10                  For Count Two, around March 2005, I transmitted  
11 documents and information via wire communications which  
12 contained false information to Argent Mortgage Company for the  
13 purpose of procuring a home mortgage for a property located at  
14 2205 Light Street in the Bronx.

15                  For Count No. 3, around December 2006, I knowingly and  
16 willfully transmitted documents and information via wire  
17 communications which contained false information to America's  
18 Wholesale Lender for the purpose of procuring a home mortgage  
19 for a property located at 238 McDonough Street in Brooklyn, New  
20 York.

21                  For Count Four, your Honor, around April 2008, I  
22 knowingly and willfully submitted to Countrywide Bank FSB  
23 documents which falsely stated the employment and income of a  
24 straw buyer to procure a home mortgage loan for the purchase of  
25 a property located at 16 Benedict Drive, Warwick, New York.

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1                   THE COURT: That sounds to me as if the allocution is  
2 sufficient.

3                   Does the government agree?

4                   MR. FERRARA: Yes, your Honor. We would only add and  
5 I believe defense counsel will stipulate that as to Counts One  
6 and Four, the lenders were FDIC insured.

7                   THE COURT: Does the defense lawyer agree that the  
8 allocution is sufficient?

9                   MS. MALGIERI: Yes, your Honor.

10                  THE COURT: I agree. I accept the plea, find that  
11 it's factually based and voluntary.

12                  And I believe there's been an agreement that a control  
13 date for the sentence is March 22, 2013 -- that's a Friday --  
14 at 4:30 in the afternoon.

15                  Is there anything else?

16                  MR. FERRARA: Your Honor, I just wanted to -- just two  
17 parts. One part of the plea agreement that is out of the  
18 ordinary, I would add Mr. Giannakos is waiving any right to  
19 challenge Counts One and Two -- sorry -- Count Two based on  
20 statute of limitations and is waiving a venue defense as to  
21 Count Three of the information. And, of course, is agreeing  
22 that there are no other promises apart from what is contained  
23 in the plea agreement your Honor referenced.

24                  The only other matter --

25                  THE COURT: Wait a minute. Do you understand what the

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1 assistant has said? Those are matters in the plea agreement.

2 Do you understand that?

3 MS. MALGIERI: I do, your Honor.

4 THE COURT: Does your client?

5 THE DEFENDANT: Yes, your Honor, I do.

6 THE COURT: All right.

7 MR. FERRARA: And, finally, the agreement contains  
8 forfeiture and restitution language. Mr. Giannakos understands  
9 that he is agreeing to forfeiture and restitution which will be  
10 computed later in the proceedings.

11 THE COURT: Do you understand that?

12 MS. MALGIERI: Yes, your Honor.

13 THE DEFENDANT: Yes, your Honor.

14 MR. FERRARA: Finally, your Honor, the only other  
15 thing we have to do since this is a first appearance,  
16 Mr. Giannakos has to have certain bail set. The parties have  
17 agreed on a proposed package which would be \$100,000 unsecured  
18 bond secured by two financially responsible persons, both of  
19 whom are in court.

20 The other regular provisions, such as travel limited  
21 to the Eastern and Southern Districts of New York.

22 Mr. Giannakos has a passport. We would ask that he surrender  
23 it by --

24 (Pause)

25 MR. FERRARA: -- a week from today, the passport, your

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1 Honor, and I believe -- and the other usual conditions. So  
2 we'd just ask your Honor consider that bail package.

3 MR. FRANZ: Can I have one moment with the assistant,  
4 your Honor.

5 (Pause)

6 MR. FERRARA: Sorry, your Honor. Defense counsel is  
7 mentioning to me that Mr. Giannakos has employment in New  
8 Jersey, so there's no objection from the government if his  
9 travel includes the District of New Jersey as well.

10 THE COURT: Defense agree to those bail conditions?

11 MS. MALGIERI: Yes, your Honor, we do.

12 THE COURT: The Court approves them.

13 Anything else?

14 MR. FERRARA: Nothing from the government, your Honor.

15 MR. FRANZ: Nothing from the defense, your Honor.

16 THE COURT: Thank you very much.

17 MR. FRANZ: Thank you.

18 MS. MALGIERI: Thank you, your Honor.

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